

FEB 13 1996

STATE OF ARIZONA

DEPARTMENT OF INSURANCE

DEPARTMENT OF INSURANCE
By

In the Matter of)	Docket No. 95A-263-INS
)	
IOWA-MIDWEST INSURANCE)	
COMPANY,)	ORDER
Respondent.)	
_____)	

On February 2, 1996, the Office of Administrative Hearings, through Administrative Law Judge Lewis D. Kowal, submitted "Recommended Findings of Fact, Conclusions of Law and Recommended Order", a copy of which is attached and incorporated by this reference. The Director of the Arizona Department of Insurance has reviewed these recommendations, and enters the following order:

1. The Recommended Findings of Fact and Conclusions of Law are adopted; and
2. The disclaimer of affiliation or control with respect to Respondent filed by Iowa Bankers Association is disallowed.

NOTIFICATION OF RIGHTS

The aggrieved party may request a rehearing with respect to this Order by filing a written petition with the Office of Administrative Hearings within 30 days of the date of this Order, setting forth the basis for such relief pursuant to A.A.C. R20-6-114(B).

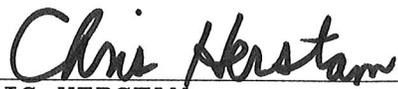
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The final decision of the Director may be appealed to the Superior Court of Maricopa County for judicial review pursuant to A.R.S. §20-166.

DATED this ^{12th} day of February, 1996.


CHRIS HERSTAM
Director of Insurance

COPY of the foregoing mailed/delivered this ^{13th} day of February, 1996, to:

Charles R. Cohen, Deputy Director
Gregory Y. Harris, Executive Assistant Director
Gary A. Torticill, Assistant Director
Kurt Regner, Analyst
Department of Insurance
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Thomas E. Haney
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Phoenix, AZ 85014



IN THE OFFICE OF ADMINISTRATIVE HEARINGS

FEB 2 1996

Office of Administrative Hearings

In the Matter of

No 95A-263-INS

~~DEPARTMENT OF INSURANCE~~
By 

IOWA-MIDWEST INSURANCE
COMPANY,

RECOMMENDED FINDINGS OF
FACT, CONCLUSIONS OF LAW
AND RECOMMENDED ORDER

Respondent.

On January 18, 1996, a hearing took place in the above-referenced matter. Assistant Attorney General W. Mark Sendrow appeared on behalf of the Arizona Department of Insurance ("Department"). Thomas E. Haney appeared on behalf of Respondent Iowa-Midwest Insurance Company.

Based upon the entire record, including all pleadings, motions, testimony, and exhibits, Administrative Law Judge Lewis D. Kowal prepared the following Recommended Findings of Fact, Conclusions of Law, and Proposed Order for consideration by the Director of the Department ("Director").

FINDINGS OF FACT

1. Respondent is an Arizona corporation which holds a certificate of authority issued by the Director of the Department to transact insurance in the State of Arizona as a Life and Disability reinsurer.

2. Iowa Bankers Insurance Services ("IBIS") is an Iowa corporation which owns one hundred percent of the voting stock of Respondent.

3. Iowa Bankers Association ("IBA"), an Iowa corporation comprised of approximately 500 Iowa banks, owns 99.4% of the voting stock of IBIS. The remaining .6% of the voting stock of IBIS is owned by all of the banks of Iowa with each owning one share.

4. On September 19, 1995, IBA filed with the Department a disclaimer of affiliation of control with respect to Respondent pursuant to A.R.S. §20-481.18 and A.A.C. R20-6-1406.

5. Kurt Regner, an Examiner for the Department, credibly testified on behalf of the Department that over the course of his approximately 9-year work experience with the Department, he has reviewed 30-40 disclaimers of control. Mr. Regner also testified that as part of his employment duties for the Department, in

1 the course of reviewing IBA's disclaimers of control, he reviewed the Amended and
2 Restated Articles of Incorporation and Bylaws of Respondent, Respondent's Form
3 "B" filings made with the Department, the Department's Report of Examination of
4 Respondent as of December 31, 1991, the Amended and Restated Articles of
5 Incorporation of IBA and the applicable statues and regulations regarding
6 disclaimers of control. Further, Mr. Regner discussed this matter with senior staff of
7 the Corporate and Financial Affairs Division of the Department.

8 6. Mr. Regner credibly testified that some of the major factors he
9 considers in reviewing and analyzing the appropriateness of disclaimers of control
10 are the following: a) stock ownership; b) who has the right to elect the insurance
11 company's Board of Directors and officers; and c) who runs the insurance
12 company's operation on a day to day basis.

13 7. Upon concluding his review as described above in Paragraphs 5 and
14 6, Mr. Regner determined that IBA's disclaimer of control with respect to
15 Respondent was not appropriate. That determination was made based upon IBA's
16 ownership of 99.4% of the voting stock of IBIS which owns 100% of the voting stock
17 of Respondent, thus providing IBA with indirect control of Respondent.

18 8. Merrit Krause, senior vice-president of IBIS and president of
19 Respondent, credibly testified on behalf of Respondent that the Directors of IBIS are
20 elected by voice vote of the shareholders of IBIS at its annual shareholders
21 meeting. The candidates for directorship are selected based upon a polling
22 conducted by IBIS. Since at least 1990, the directors have been elected by voice
23 vote only without any actual balloting. Shareholders in attendance at the annual
24 meeting are polled as to their vote with no proportional voting weight given to the
25 number of voting shares owned by each shareholder. At the annual election of
26 directors, an elected officer of IBA is present and voices a vote on behalf of IBA.
27 That officer usually receives direction from the IBA board of directors as to how to
28 vote at that election.

29 9. Although not an officer or director of IBA, Mr. Krause routinely attends
30 and participates at IBA board of directors meetings at the request of the boards of
31 directors of IBA and IBIS. At those meetings, the IBA board of directors exercises
32 oversight of IBIS and Respondent by having Mr. Krause report on the operations of
33 those entities.

1 10. Respondent's contention that no individual member of IBA has the
2 ability to control the election of the directors was not refuted by the Department.
3 However, Respondent did not refute that IBA and not its individual members has the
4 ability to control IBIS' election of directors. This was supported by Mr. Krause's
5 credible testimony that if an IBIS election for directors was contested or that the IBA
6 representative voted differently than the other shareholders present during the
7 election of directors, the vote of IBA would determine that election's outcome
8 because of IBA's 99.4% shareholder interest in IBIS.

9 11. The board of directors for Respondent are elected by the board of
10 directors of IBIS. Respondent's board of directors elect officers for Respondent.

11 12. An insurance holding company system is defined in A.R.S. §20-481(4)
12 as being "two or more affiliated persons, one or more of whom is an insurer."

13 13. Pursuant to A.R.S. §20-481(6) the term "person" can among others,
14 mean an individual, a corporation or an association.

15 14. Pursuant to A.R.S. §20-481(3), the terms "control" and "controlling" as
16 defined in the Arizona Insurance Holding Company System statutes mean:

17 the possession, direct or indirect, of the power to direct or cause
18 direction of the management and policies of a person, whether through
19 the ownership of voting securities, by contract other than a commercial
20 contract for goods or nonmanagement services, or otherwise, unless
21 the power is the result of an official position with or corporate office
22 held by the person. Control shall be presumed to exist if any person,
23 directly or indirectly, owns, controls, holds with the power to vote or
24 holds proxies representing ten per cent or more of the voting securities
25 of any other person. This presumption may be rebutted by a showing
26 made in the manner provided by §20-481.18 that control does not
27 exist in fact. The director may determine, after furnishing all persons
28 in interest notice and opportunity to be heard and making specific
29 findings of fact to support such determination, that control exists in
30 fact, notwithstanding the absence of a presumption to that effect.

31 15. The Department's Report of Examination of Respondent as of
32 December 31, 1991 (Exhibit 4) contains a determination that Respondent is a
33 member of an insurance holding company system as defined in A.R.S. §20-481 with
34 the ultimate controlling person being IBA. This determination was made based upon
information at that time that IBA owned approximately 92% of the voting stock of
IBIS. A Form "B" filing submitted to the Department on March 31, 1993 that was

1 noted to be an annual filing indicated that the ownership figure of 92% had changed
2 to 99%.

3 16. Respondent contends that the definition of "control" for purposes of
4 the Arizona Holding Company Systems statutes as set forth in A.R.S. §20-481(3)
5 provides an exemption when the "power is the result of an official position with or
6 corporate office held by the person." Thus, Respondent argues that the Department
7 must look outside the corporate offices or positions to determine whether control
8 exists.

9 17. The Department contends that the exemption contained in A.R.S. §20-
10 481(3) should be interpreted to apply to an individual being considered to be in
11 control when the only basis for a determination that control exists is by virtue of that
12 individual's official position or corporate office.

13 18. The disclaimer of control submitted to the Department by IBA states
14 that IBA consists of 494 members which are banks each having one vote and that
15 no one person or organization owns or controls more than 10% of IBA.

16 19. Pursuant to A.R.S. §20-481(3), IBA's control of Respondent is
17 presumed because of IBA's ownership of 99.4% of the voting stock of ownership of
18 IBIS and IBIS' ownership of 100% of the voting stock of Respondent.

19 20. The Respondent did not produce sufficient evidence to rebut the
20 presumption that IBA has control of Respondent. The evidence, as described
21 above, establishes that IBA's does in fact have indirect control of Respondent.

22 CONCLUSIONS OF LAW

23 1. The Director has jurisdiction over this matter pursuant to A.R.S. §§20-
24 161 and 20-481.18, 41-1061 et seq. and A.A.C. R20-6-1406.

25 2. IBA has indirect control of Respondent within the meaning of A.R.S.
26 §20-481(3) based upon IBA's ability to control IBIS through IBA's stock ownership of
27 IBIS and the ability of IBIS to control Respondent by virtue of IBIS' stock ownership
28 of Respondent.

29 3. The exemption in A.R.S. §20-481(3) relating to an official position with
30 or corporate office held by a person is interpreted to mean that an individual who
31 possesses the power to direct or cause direction of management and policies as a
32 result of being in an official position or corporate office will not be determined to be
33 personally in control. IBA does not hold an official position or corporate office
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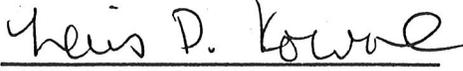
1 within the meaning of A.R.S. §20-481(3). IBA, as a corporation, acting through its
2 board of directors, has the power to control Respondent. The exemption in A.R.S.
3 §20-481(3) cited by Respondent does not apply in this instance.

4 4. Based upon the above, a preponderance of the evidence establishes
5 that IBA is a person within the meaning of A.R.S. §20-481(6) that has indirect
6 control of Respondent within the meaning of A.R.S. §20-481(3).

7 **RECOMMENDED ORDER**

8 The undersigned Administrative Law Judge recommends that the disclaimer
9 of control submitted by Iowa Bankers Association be disallowed.

10 DATED this *2nd* day of February, 1996.

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12
13 
14 LEWIS D. KOWAL
15 Administrative Law Judge
16

17 COPY of the foregoing mailed/delivered
18 this *2nd* day of February, 1996, to:

19 Chris Herstam, Director
20 Arizona Department of Insurance
21 2910 North 44th Street, Suite 210
22 Phoenix, AZ 85018

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24
25 Chris Crawford
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